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20995 7590 10/19/2011 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRADLEY G. VERNON and
PATRICK D. ARNOLD

Appeal 2009-013984
Application 10/699,485
Technology Center 3600

Before JOHN C. KERINS, STEVEN D.A. McCARTHY and
EDWARD A. BROWN, *Administrative Patent Judges*.

McCARTHY, *Administrative Patent Judge*.

DECISION ON APPEAL

1 The Appellants appeal under 35 U.S.C. § 134 from the Examiner's
2 final decision rejecting claims 4, 6-9 and 13-19 under 35 U.S.C. § 103(a) as
3 being unpatentable over Jameson (US 5,395,148, issued March 7, 1995) and
4 Lantz (US 1,927,873, issued July 30, 1932). We have jurisdiction under 35
5 U.S.C. § 6(b).

6 We REVERSE.

Claims 4, 13 and 16 are independent claims. Claim 4 is illustrative of the claims on appeal:

4. A magnetic rake, comprising:
one or more magnets;
a hollow, unitarily formed, toothed rake body containing said magnets; and
a handle attached to said rake body.

Jameson discloses a magnetic rake or sweeper 10 including a housing 20 with a handle 50 attached to the housing 20. (Jameson, col. 1, l. 67 – col. 2, l. 2 and col. 2, ll. 60-61). Jameson’s housing 20 is generally cylindrical containing a plurality of magnets 60 therein. (Jameson, col. 3, ll. 6-8). Jameson describes the housing 20 as being formed from a non-metallic material (Jameson, col. 3, ll. 3-6) so that the magnets 60 may attract and collect metal particles on the surface of the housing 20 (*cf.* Jameson, col. 1, ll. 7-11 (describing the function of magnetic sweeping devices in general)). Jameson’s magnetic sweeper also has a cleaning cuff 100 that can be placed over the housing 20. Jameson describes sliding the cleaning cuff 100 over the housing 20 to clean off the metal particles collected on the housing 20. (Jameson, col. 3, ll. 19-24).

The Examiner finds that the magnetic rake 10, the magnets 60, and the handle 50 of Jameson correspond respectively to the “magnetic rake,” “magnets” and “handle” recited in claim 4. The Examiner also finds that the housing 20 of Jameson corresponds to a hollow, unitarily formed rake body containing magnets. (Ans. 4).

The Appellants and the Examiner agree that while Jameson describes a device referred to as a “magnetic rake,” the device does not include a toothed rake body as recited in claim 4. (*See* App. Br. 9; Ans. 4). Neither

1 does Jameson describe means for agitating a ground surface of an area as
2 recited in claim 16. Similarly, Jameson fails to disclose operating a toothed
3 rake body as recited in claim 13.

4 Lantz teaches a non-leaf holding rake having a toothed body *1* (Lantz
5 1, ll. 34-53). Nevertheless, the Examiner has not articulated a reason with
6 some rational underpinning why one of ordinary skill in the art might have
7 added teeth to any portion of Jameson's magnetic sweeper, such as the
8 housing *20*. One of ordinary skill in the art would have been discouraged
9 from adding such teeth because the addition of teeth to the Jameson device
10 would have hindered a user from sliding the cleaning cuff *100* over the
11 housing *20*. Furthermore, one of ordinary skill in the art would have
12 recognized that the addition of teeth to the Jameson device would have held
13 the magnetic housing up off the surface to be swept, reducing the
14 effectiveness of the device. (*See* App. Br. 9-10). The Examiner's
15 conclusion that it would have been obvious to add teeth to Jameson's
16 magnetic sweeper "so that the teeth could agitate and pull up articles from
17 the ground" (Ans. 4) is not persuasive in view of these factors.

18 The Examiner does not persuasively explain how one of ordinary skill
19 in the art familiar with the teachings of Lantz would have had reason to
20 modify the rake body of Jameson in the fashion claimed in claims 4 and 16.
21 Neither does the Examiner persuasively explain why a method including the
22 step of operating over a surface area a hollow, unitarily formed toothed rake
23 body as recited in claim 13 would have been obvious. We do not sustain the
24 rejection of claims 4, 6-9 and 13-19 under § 103(a) as being unpatentable
25 over Jameson and Lantz.

DECISION

We REVERSE the Examiner's decision rejecting claims 4, 6-9 and
13-19.

REVERSED

Klh